

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

STATE OF OREGON

Plaintiff,

v.

Defendant.

DOB: _____

SID: _____

CASE NO: _____

DA NO: _____

**ORDER FINDING THE DEFENDANT
UNABLE TO AID AND ASSIST AND
ORDER TO **TRANSPORT IN CUSTODY**
DEFENDANT TO THE OREGON STATE
HOSPITAL FOR TREATMENT
(ORS 161.370)**

This matter came before the Court on _____ for a determination of the
defendant's fitness to proceed pursuant to ORS 161.370.

The defendant appeared in custody, with counsel _____, OSB # _____
_____, and the State appeared through _____, OSB # _____
_____.

The Court finds that defendant is charged with the following offenses (listed in order of
seriousness by crime classification):

Crime Name: Crime ORS#: Felony/Misd/Viol: Maximum Sentence: Booking Date:

1.

2.

3.

4.

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Based on the Court's review and consideration of:

- ☐ The report of certified evaluator _____, dated _____
(ORS 161.365(3));
- ☐ Consultation from the community mental health program (CMHP);
- ☐ The Court's inquiry and observation of defendant at the hearing;
- ☐ The defense counsel's representation;
- ☐ Other information provided, to wit: _____.

THE COURT being fully informed **FINDS** the defendant lacks the fitness to proceed, as defined by ORS 161.360(2), and:

1. In consideration of the primary and secondary release criteria (ORS 135.230), the least restrictive option appropriate for the defendant, the needs of the defendant and the interests of justice, commitment of the defendant is the appropriate action.
2. Defendant:
 - ☐ Is a danger to self or others as a result of a qualifying mental disorder; and
 - ☐ Requires a hospital level of care due to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder.
3. Based the consultation performed by the CMHP, services and supervision necessary to allow the defendant to gain or regain fitness to proceed are not available in the community.
4. The most serious offense in the charging instrument is a:
 - ☐ Felony; or
 - ☐ Misdemeanor, and _____ certified evaluator/_____ community mental health program has determined that the defendant ____ does/____ does not require a hospital level of care due to the defendant's dangerousness and the acuity of the symptoms of the defendant's qualifying mental disorder.

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1 It is therefore **ORDERED**:

- 2 1. The criminal proceeding in the aforementioned matter against the defendant is
3 suspended;
- 4 2. Defendant is committed to the custody of the Superintendent of the Oregon State
5 Hospital (OSH) for treatment.
- 6 3. The _____ County Sheriff shall TRANSPORT defendant from the County
7 Jail to OSH in Salem, Oregon and shall return the defendant to the county jail upon
8 notification from OSH.
- 9 4. The Superintendent shall:
 - 10 a. Cause defendant to be evaluated within 60 days of defendant's delivery into the
11 custody of the Superintendent for the purpose of determining whether there is a
12 substantial probability that, in the foreseeable future, defendant will have the
13 capacity to stand trial. ORS 161.370(8).
 - 14 b. Immediately notify the Court if the defendant, at any time, gains or regains the
15 capacity to stand trial or will never have the capacity to stand trial
 - 16 c. Within 90 days of the defendant's delivery to the Superintendent's custody, notify
17 the Court that:
 - 18 i. The defendant has the present capacity to stand trial; or
 - 19 ii. There is a substantial probability in the foreseeable future the defendant will
20 gain or regain the capacity to stand trial and give the court an estimate of time
21 in which the defendant is expected to gain or regain capacity; or
 - 22 iii. If there is no substantial probability that in the foreseeable future, the
23 defendant will gain or regain the capacity to stand trial.
 - 24 d. Submit a progress report update to the court concerning the defendant's capacity
25 or incapacity at least once every 180 days (as measured from the date of
26

defendant's delivery into the Superintendent's custody) for the duration of the defendant's commitment; and

- e. Notify the court if the Superintendent determines that defendant is no longer dangerous to self or others due to a qualifying mental disorder, no longer requires a hospital level of care due to acuity of symptoms from defendant's qualifying mental disorder, or that the supervision and services necessary to restore defendant's fitness to proceed are available in the community, the superintendent shall file notice of that determination with the court.

5. A defendant's commitment to OSH shall be no longer than the maximum sentence the court could have imposed if the defendant had been convicted or three (3) years, whichever is less (ORS 161.370(10)(a)). Also, HB 2308 (2017) requires the court to give credit for time in jail to defendants who are not charged with a crime listed in ORS 137.700(2). This defendant ____ is/is not ____ charged with a crime listed in ORS 137.700(2). Therefore:

a. The maximum commitment to OSH while unable to aid and assist is:

- i. ☐ 3 years (if charges are Felony C, B, or A), or
- ii. ☐ 1 year (Misdemeanor A), or
- iii. ☐ Other _____ (maximum of pending charges)

b. The effective date for calculating this legal status is:

- iv. ☐ Date committed to OSH (date order signed) _____, or
- v. ☐ Date of arrest/booking of _____, or
- vi. ☐ Date committed to OSH subtracting/giving credit for ____ days of confinement.

(Court relies upon the date provided by the _____ County Sheriff's Department records for calculation of time in custody since initial booking date.)

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6. Any public and any private medical provider in possession of records concerning the defendant release those records to OSH for the purpose of, and use in, restoring defendant's fitness to proceed. These documents shall be provided to OSH within 5 business days of receipt of this order. The Oregon Youth Authority, the Department of Corrections, a community college district or service district, a public university, a school or education service district may, after notifying the state hospital, comply with the court order within 15 business days of receipt of this order.
7. The District Attorney, defense attorney, and _____ County Sheriff/jailer shall provide all non-privileged pertinent information about defendant to the OSH within 5 business days of this court order.
8. The notices and reports and updates of the examination and/or defendant's progress in treatment shall be filed electronically in the Oregon Judicial Department's Ecourt system with the Clerk of the Court for _____ County.
9. In addition, OSH shall provide _____ County Mental Health Department with its reports and updates regarding defendant for continuity of care purposes.

Further proceedings are set for hearing in Courtroom _____ on _____ at _____.

DATED: _____

Circuit Court Judge

Defense Attorney

Name: _____

Address: _____

Email: _____

Ph. No.: _____

Deputy District Attorney

Name: _____

Address: _____

Email: _____

Ph. No.: _____